



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,052	12/30/2003	Brian Alan Grove	2043.036US1	9104
49845 7590 06/26/2007 SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
			EXAMINER GARG, YOGESH C	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 06/26/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWK.COM

# Office Action Summary

Application No.

10/750,052

Applicant(s)

GROVE ET AL.

Examiner

Yogesh C. Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15-21,51-57,87-93 and 116-119 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-21,51-57,87-93 and 116-119 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/26/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment filed on 3/26/2007 is entered; Claims 1-14, 23-50, 59-86, 95-115 and 120-131 were previously canceled. Claims 22, 58, and 94 are currently canceled. Currently claims 15-21, 51-57, 87-93, and 116-119 are pending for examination

***Response to Arguments***

2. Applicant's arguments filed on 3/26/2007 with respect to currently amended claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3.1. Claims 15-18, 21, 51-54, 57, 87-90, 93 and 116-119 rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi (US PG-Pub 20020161691) in view of Holden et al. (US Publication 20010032175A1), hereinafter Holden.

Regarding claim 15, Nishi discloses a network-based commerce system including a processor coupled to a memory through a bus (see Fig1, paragraphs 0001-0029 and 0068-0071. The computer 4 performing the center processing includes a processor coupled to a memory through a bus for storing computer programs) and an auction price-setting process executed from the memory by the processor to cause the

Art Unit: 3625

processor to adjust a reserve price associated with a listing of an item during a network-based auction price-setting process (see at least paragraphs 0088 and 0156-0174.). .

Regarding limitation, “notifying automatically one or more bidders of the adjustment of the reserve price”, it would be implied that Nishi, via its computerized system communicates the adjustment of the reserved price to the bidders enabling them to consider it before making bids. Nishi does not explicitly teach that notification to bidders is carried out automatically via e-mail. However, it was well-known at the time of the applicant’s invention to set automatic triggers for sending automatic notifications via emails to users/consumers, see Holden (at least paragraph 0082 and claim 28). In view of Holden, it would be obvious to one of an ordinary skilled in the art to set automatic triggers for automatically notifying one or more bidders about change in the reserve price because this enables efficient and real time communication of change in the ongoing auction terms which all bidders must know.

Regarding claims 16-18, Nishi fairly suggests any one of the adjustments that is the adjustment of the reserve price includes removing the reserve price (see paragraph 0062 and claim 5 on page 7. If the bids do not equal or exceed the reserve price the reserve price is removed/not considered and the highest bidder is designated as the bidder) or lowering or raising the reserve price (see at least paragraphs 0156-0172 which discloses modifying the reserve price based upon the status of bids received and shows an example as how the reserve price is adjusted lower to the highest bid price if none of the bids received are equal or greater than the originally fixed reserve price.

Paragraph 0115 suggests that when a plurality of buyers bid higher than the reserve price the auction is continued to next cycle with the new start price, which corresponds to the new reserve price which is raised from its earlier value with the anticipation that higher bidding price can be obtained).

Regarding claim 21, Nishi further suggests that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to lower a proxy bid, of a buyer higher than the adjusted reserve price, to a predetermined amount below the adjusted reserve price (see at least paragraphs 0138-0145 and 0156-0174. If during an auction cycle the highest bid is less than the reserve price within a predefined range the auction process adjusts the reserve price and while doing so the maximum proxy bid/representation bid is also modified to, that is lowered to the highest bid plus a minimum bidding price unit.)

Regarding claims 51-54, 87-90, 116-119, their limitations are closely parallel to the limitations of claims 15-18 and are therefore analyzed and rejected on the basis of same rationale set forth for claims 15-18 above.

Regarding claims 57 and 93, their limitations are closely parallel to the limitations of claim 21 and are therefore analyzed and rejected on the basis of same rationale as set forth for claim 21 above.

Art Unit: 3625

3.2. Claims 19-20, 55-56 and 90-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi/Holden in view of Herschkorn (US Patent 6,691,094 B1).

Regarding claims 19-20, Nishi/Holden teaches all the limitations of claim 15, as analyzed above. Nishi/Holden does disclose that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to automatically notify a seller of the item when a high proxy bid is within a predetermined percentage range of the adjusted reserve price or within a predetermined value range of the reserve price. Herschkorn, in the same field of endeavor of matching sellers and buyers fairly suggest and discloses this limitation (see at least col.5, line 66-col.6, line 4, col.15, lines 56-67, col.24, lines 50-63, that is claims 9-10. Herschkorn teaches that the system/processor determines if the buyer's bid [corresponds to high proxy bid as recited in the claim] does not match with the seller's offer [corresponds to the seller's reserve price as recited in the claim] but is within a predetermined threshold, such as within 1-5 points or \$100,000 both the seller and buyer are notified. In view of Herschkorn, it would be obvious to one of an ordinary skilled in the art that while conducting auctions for large valued items to modify Nishi to incorporate Herschkorn features because when the system determines that the buyer's bids does not match or exceed the seller's reserve price but they are within a predetermined proximity of the seller's reserve price either in points/percentage or value and informs about it to both the seller and buyer then there is a possibility that buyer and seller could negotiate and close the deal.

Regarding claims 55-56 and 90-91, their limitations are closely parallel to the limitations of claims 19-20 and are therefore analyzed and rejected on the basis of same rationale set forth for claims 19-20 above

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Morimoto (US 20020169710 A1, see paragraph 040), and Baumgartner et al. (US 20050022115 A1, see paragraph 0546) disclose setting automatic triggers to automatically notify users/bidders of a particular event as and when required.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

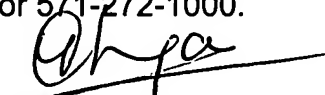
Art Unit: 3625

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yogesh C Garg  
Primary Examiner  
Art Unit 3625

YCG  
6/13/2007